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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID LEE  
205 Myrtle Street  
Bakersfield, CA 93304

Respiratory Care Practitioner License No. 24148

Respondent.

Case No. 1H 2007 481

**DEFAULT DECISION  
AND ORDER**

[Gov. Code §11520]

FINDINGS OF FACT

1. On or about January 13, 2009, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, filed Accusation No. 1H 2007 481 against David Lee (Respondent) before the Respiratory Care Board.

2. On or about February 9, 2005, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 24148 to Respondent. The license expired on October 31, 2007, and has not been renewed.

3. On or about January 13, 2009, Andrea Pina, an employee of the Complainant Agency, served by Certified and First Class Mail a copy of the Accusation No. 1H 2007 481, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,

1 which was and is 205 Myrtle Street, Bakersfield, CA 93304. A copy of the Accusation, the  
2 related documents, and Declaration of Service are attached as exhibit A, and are incorporated  
3 herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the  
5 provisions of Government Code section 11505, subdivision (c).

6 5. Business and Professions Code section 118 states, in pertinent part:  
7 "(b) The suspension, expiration, or forfeiture by operation of law of a license  
8 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the  
9 board or by order of a court of law, or its surrender without the written consent of the board, shall  
10 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the  
11 board of its authority to institute or continue a disciplinary proceeding against the licensee upon  
12 any ground provided by law or to enter an order suspending or revoking the license or otherwise  
13 taking disciplinary action against the license on any such ground."

14 6. Government Code section 11506 states, in pertinent part:  
15 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
17 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
18 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

19 7. Respondent failed to file a Notice of Defense within 15 days after service  
20 upon him of the Accusation, and therefore waived his right to a hearing on the merits of  
21 Accusation No. 1H 2007 481.

22 8. California Government Code section 11520 states, in pertinent part:  
23 "(a) If the respondent either fails to file a notice of defense or to appear at the  
24 hearing, the agency may take action based upon the respondent's express admissions or  
25 upon other evidence and affidavits may be used as evidence without any notice to  
26 respondent."

27 9. Pursuant to its authority under Government Code section 11520, the Board  
28 finds Respondent is in default. The Board will take action without further hearing and, based on

1 Respondent's express admissions by way of default and the evidence before it, contained in  
2 exhibits A through D, finds that the allegations in Accusation No. 1H 2007 481 are true.

3 DETERMINATION OF ISSUES

4 1. Based on the foregoing findings of fact, Respondent David Lee has  
5 subjected his Respiratory Care Practitioner License No. 24148 to discipline.

6 2. A copy of the Accusation and the related documents and Declaration of  
7 Service are attached.

8 3. The agency has jurisdiction to adjudicate this case by default.

9 4. The Board is authorized to revoke Respondent's Respiratory Care  
10 Practitioner License based upon the following violations alleged in the Accusation:

11 Respondent is in violation of Business and Professions code sections 3750(d),  
12 3750(g), 3752 [substantially related conviction] and CCR 1399.370(a) in that in 2007, he was  
13 convicted of violating Penal Code section 12280(b) [willfully and unlawfully carrying a loaded  
14 firearm in a public place.]

15 5. Respondent is hereby ordered to pay the above costs of investigation and  
16 enforcement of this action.

17 ORDER

18 IT IS SO ORDERED that Respiratory Care Practitioner License No. 24148,  
19 heretofore issued to Respondent David Lee, is revoked.

20 Respondent is ordered to reimburse the Respiratory Care Board the amount of  
21 \$808.00 for its investigative and enforcement costs. The filing of bankruptcy by Respondent  
22 shall not relieve Respondent of his responsibility to reimburse the Board for its costs.

23 Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all  
24 costs ordered under Business and Professions Code section 3753.5 have been paid.

25 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
26 serve a written motion requesting that the Decision be vacated and stating the grounds relied on  
27 within seven (7) days after service of the Decision on Respondent. The agency in its discretion  
28 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the

1 statute.

2 This Decision shall become effective on April 9, 2009.

3 It is so ORDERED March 10, 2009

5 Original signed by:

6 LARRY L. RENNER, BS, RRT, RCP, RPFT  
7 PRESIDENT, RESPIRATORY CARE BOARD  
8 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

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10 DOJ Matter ID: SF2008200889

11 Attachments:

12 Exhibit A: Accusation No.1H 2007 481, Related Documents, and Declaration of Service  
13 Exhibit B: Bakersfield Police Department report for 8/23/2007 arrest  
14 Exhibit C: Kern County Superior Court case no. BK07183562 court documents  
15 Exhibit D: Certification of Costs: Declaration of Catherine Santillan